



**ENVIRONMENTAL PROTECTION AGENCY**

**6560-50-P**

**[EPA-HQ-OGC-2018-0591; FRL-9982-56-OGC]**

**Proposed Second Interim Settlement Agreement, Clean Water Act Claims**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the EPA Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed Second Interim Settlement Agreement in a lawsuit filed by the West Goshen Sewer Authority ("WGSA" or "Plaintiff") in the United States District Court for the Eastern District of Pennsylvania: *West Goshen Sewer Authority v. EPA, et al.* On September 19, 2012, Plaintiff filed a complaint alleging, inter alia, that the United States Environmental Protection Agency ("EPA") exceeded its statutory authority and acted arbitrarily and capriciously when it established a "total maximum daily load" for Goose Creek in southeastern Pennsylvania. The proposed Second Interim Settlement Agreement would memorialize commitments by WGSA, among other things, to install a "CoMag" ballasted flocculation system at its wastewater treatment plant and achieve certain specified discharge limits for phosphorus. After a period of time, EPA would reassess the water quality of Goose Creek and decide whether to withdraw, revise or retain the Goose Creek TMDL.

**DATES:** Written comments on the proposed Second Interim Settlement Agreement must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2018-0591, online at [www.regulations.gov](http://www.regulations.gov) (EPA’s preferred method). For comments submitted at [www.regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](http://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jim Curtin, Water Law Office (7451), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564-5482; email address: [Curtin.James@epa.gov](mailto:Curtin.James@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Additional Information About the Proposed Second Interim Settlement Agreement**

On June 30, 2008, EPA established a nutrient total maximum daily load (“TMDL”) for

the Goose Creek Watershed in Chester and Delaware Counties, Pennsylvania. EPA established that TMDL pursuant to the April 9, 1997 Consent Decree entered in *American Littoral Society, et al., v. EPA*, No. 96-489 (E.D. Pa.). Among other things, the TMDL assigned wasteload allocations (“WLAs”) for phosphorus to Goose Creek’s point source dischargers, WGSA’s wastewater treatment plant being the largest.

WGSA filed a complaint against EPA on September 19, 2012, alleging that in establishing the Goose Creek TMDL EPA failed to comply with requirements of the Clean Water Act (CWA) and Administrative Procedure Act (APA). In July 2013, the Court granted intervener status to the Delaware Riverkeeper Network (“DRN”).

The Court placed the case in “civil suspense” following the parties’ execution in January 2014 of a first “Interim Settlement Agreement” (“the 2014 Agreement”) under which EPA reassessed the water quality of Goose Creek and WGSA made voluntary improvements in its operations to achieve phosphorus reductions. The parties have now reached agreement on the terms of a “Second Interim Settlement Agreement” in which (1) WGSA commits, among other things, to install a “CoMag” ballasted flocculation system at its wastewater treatment plant and achieve certain specified discharge limits for phosphorus and (2) EPA commits to reassess the water quality of Goose Creek and decide whether to withdraw, revise or retain the Goose Creek TMDL.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed Second Interim Settlement Agreement from persons who are not named as parties or intervenors to the litigation in question.

If so requested, EPA will also consider holding a public hearing on whether to enter into the proposed Second Interim Settlement Agreement. EPA or the Department of Justice may withdraw or withhold consent to the proposed Second Interim Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this proposed Second Interim Settlement Agreement should be withdrawn, the parties intend to sign the Agreement and inform the Court.

## **II. Additional Information About Commenting on the Proposed Second Interim Settlement Agreement**

### *A. How can I get a copy of the proposed Second Interim Settlement Agreement?*

The official public docket for this action (identified by EPA-HQ-OGC-2018-0591) contains a copy of the proposed Second Interim Settlement Agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available on EPA’s website at [www.epa.gov/dockets](http://www.epa.gov/dockets) and also through [www.regulations.gov](http://www.regulations.gov). You may use [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.” It is important to note that

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 10, 2018.

**Steven Neugeboren,**

*Associate General Counsel.*

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